REMARKS

The Final Rejection mailed October 11, 2005, has been carefully considered. In response thereto, the present application has been amended in a manner which is believed to place it into consideration for allowance. Accordingly, reconsideration and allowance are respectfully solicited in view of the foregoing amendments and the following remarks.

The Applicants respectfully submit that the present Amendment overcomes the rejection of claim 1 under 35 U.S.C. § 112, second paragraph.

The Applicants further submit that the present Amendment overcomes the rejection of claims 1, 3-8 and 12-13 under 35 U.S.C. § 103(a) over *Badt* in view of *Bush*.

The present claimed invention monitors the performance and availability of application servers on a network. The performance and availability include a percentage of time that each of the application servers is available to an end user relative to the time the application servers are intended to be available and a responsiveness of the application servers to the end user in terms of a delay between the end user's entering data into a workstation keyboard and a response from one of the application servers with new data on the user's workstation screen.

The *Badt* invention is at a very low level (OSI Layer 1-3) within the network and is in no way related to the response to a particular end-user of an application server (OSI Layer 7), which is transaction-oriented, as in the present invention. The *Badt* invention is concerned with rerouting packets using the most expedited route.

The present invention specifies that each transaction is logged in order to report the overall performance of the entire application system (see claim 1, steps (a) and (d)). An end-user transaction is made up of many network packets and application server interactions.

Thus, *Badt* would not have taught or suggested the present claimed invention. Indeed, it is non-analogous prior art and is therefore not available against the present invention under 35 U.S.C. § 103. Analogous prior art is defined in *In re Clay,* 23 U.S.P.Q.2d 1058, 1060 (Fed. Cir. 1992):

> (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.

It is clear from the above that *Badt* does not meet the above standard for analogous prior art.

Since *Bush* does not overcome the above-noted deficiencies of *Badt,* the combination of references proposed in the Final Rejection would not have resulted in the present claimed invention. Also, since *Badt* is non-analogous prior art, it would not have been obvious to combine the references to achieve the present claimed invention.

Finally, the Applicants respectfully submit that the remaining grounds of rejection are moot, as the dependent claims are patentable along with claim 1.

For the reasons set forth above, the Applicants respectfully submit that the application as amended is in condition for allowance. Notice of such allowance is respectfully solicited.

If there remain any issues that can be overcome through a further telephone communication, the Examiner is invited to telephone the undersigned at the telephone number set forth below.

Please charge any deficiency in fees, or credit any overpayment thereof, to the account of Blank Rome, LLP, Deposit Account No. 23-2185 (111788.00101). If a petition for an extension of time is required to render the present submission timely and either is not filed concurrently herewith or is insufficient to render the present submission timely, the Applicants hereby petition

under 37 C.F.R. § 1.136(a) for an extension of time for as many months as are required to render the present submission timely. Any fee due is authorized above.

Respectfully submitted,

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By:_____

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